

Notice of Allowability

Application No.

10/722,724

Examiner

Richard A Rosenberger

Applicant(s)

BORDEN ET AL.

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2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 9/10/2004.
2. ☒ The allowed claim(s) is/are 28-44.
3. ☒ The drawings filed on 25 November 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>7/6/04; 9/27/04</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

1. The following is an examiner's statement of reasons for allowance.
2. The remarks filed 10 September 2004 argue that this application is entitled to the filing date of the parent application 09/095,804 because at application incorporates by reference another application, 09/095,805, stating that the instant specification is identical to that of 09/095,805 (remarks, page 5, last two lines). This appears to be under the law a proper incorporation of reference for filing date purposes; see *Ex parte Maziere*, 27 USPQ2d 1705 (BPAI 1993). Thus this application appears to be entitled to the filing date of application 09/095,804.
3. The Maris reference (US 5,706,094) shows a similar arrangement, including, as set forth in the previous Office action, a range of modulation frequencies that overlaps slightly the range of modulation frequencies that is intended to be covered by the claimed "sufficiently low to ensure that at least a majority of heat is transferred out of the region by diffusion rather than by a thermal wave". However, Maris does not teach that the measurement can be used to determine electrical (instant claim 28) or thermal (instant claim 38) conductivity of the sample. Thus both independent claims 28 and 38 are allowable over the Maris reference.

Smith et al (US 5,228,776), similar to the Rosencwaig et al reference (4,679,946) discussed in the previous Office action, shows measuring thermal conductivity of a metal by a similar system, and teaches (column 9, lines 15-24) that due to the Wiedermann-Franz law relating thermal and electrical conductivities of metals, the

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technique can be used "as an ohm meter on a micron scale" (column 9, line 22). Smith et al teaches that the excitation of the pump beam "will generate thermal and/or plasma waves" (column 5, lines 42-44), and teaches using a frequency in the range of "on the order of 1 MHz" (column 2, line 20). Thus Smith et al does not teach the claimed "claimed frequency that is predetermined to be sufficiently low to ensure that at least a majority of heat is transferred out of the region by diffusion rather than by a thermal wave".

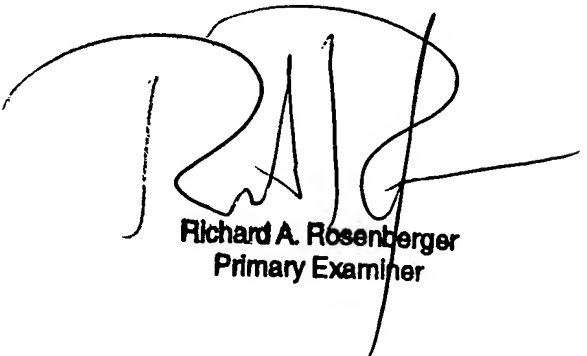
4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
24 November 2004



Richard A. Rosenberger
Primary Examiner